IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DANIEL CARL BYRD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-446-SLR
	)	
RAPHAEL WILLIAMS, C.M.S. CORRECTIONAL SERVICES, and PRISON EYE DR.	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Plaintiff Daniel C. Byrd, SBI #219233, a pro se litigant, is presently incarcerated at the Multi-Purpose Criminal Justice Facility ("Gander Hill") located in Wilmington, Delaware. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two-step process. First, the court must determine whether plaintiff is eligible for pauper status. On June 29, 2001, the court granted plaintiff leave to proceed in forma pauperis. On August 6, 2001, the court ordered plaintiff to pay $22.17 as an initial partial filing fee within thirty days from the date the order was sent. Plaintiff paid the $22.17 on

September 5, 2001.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).[1] If the court finds plaintiff's complaint falls under any of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less

[1] These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] As discussed below, plaintiff's vicarious liability claim against defendant Williams has no arguable basis in law or in fact, and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1). However, plaintiff's Eighth Amendment claim is not frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. Complaint and Motion for Discovery

Plaintiff alleges that on November 2, 2000, he slipped in a puddle of water and fell, striking his eye "on a broken piece of

[2] Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

metal." Plaintiff alleges that he "immediately" began to put in sick call slips, but he was not taken to the infirmary until November 5, 2000. (D.I. 2 at 3-4) Plaintiff further alleges that on November 5, 2000, he was seen by a nurse who gave him aspirin. (Id.) Plaintiff alleges that he did not see an eye doctor until March 20, 2001 and at that time, he was told he need to have a "scat scan" [sic]. Finally, plaintiff alleges that on March 26, 2001, he was seen by the prison doctor for migraine headaches and prescribed medication, but the medication "did not stop the pain." (Id.) Plaintiff has named Raphael Williams, Prison Health Services ("PHS"), Correctional Medical Services ("CMS") and the "Prison Eye Doctor" as the defendants. However, plaintiff has not raised any specific allegations about defendant Williams.

Plaintiff requests that the court order defendants CMS and PHS treat his eye problem and to order damages in an amount the court deems appropriate. (D.I. 2 at 5) On July 25, 2002, plaintiff filed a "Motion for Discovery" requesting "disclosure of all relevant information and also ... information upon conducting oral examinations or written interrogation" of witnesses. (D.I. 7 at 2) As this is an in forma pauperis case subject to screening under 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court has not yet directed the United States Marshal to serve the complaint. Consequently, the defendants are

not required to respond to discovery requests until they are properly served. See Fed. R. Civ. P. 4.

B. Analysis

1. Plaintiff's Vicarious Liability Claim

In the complaint, plaintiff merely alleges that defendant Williams is the Warden at the MPCJF. (D.I. 2 at 2) Plaintiff has not made any specific allegations regarding this defendant. In fact, nothing in the complaint indicates that defendant Williams was aware of the incident on November 3, 2000 or plaintiff's subsequent medical treatment.

Plaintiff's claim against defendant Williams is based solely on a vicarious liability theory and must also be dismissed. Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. See Monell v. Dep't of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989)). Here, plaintiff does not raise any specific allegations regarding defendant Williams. Rather, plaintiff implies that the defendant is liable simply because of

his supervisory position. (D.I. 2 at 2)

Nothing in the complaint indicates that defendant Williams was the "driving force [behind]" PHS, CMS or the "prison eye doctor's" actions, or that he were aware of plaintiff's allegations and remained "deliberately indifferent" to his plight. Sample v. Diecks, 885 F.2d at 1118. To the extent that plaintiff seeks to hold defendant Williams vicariously liable for the other defendants's actions, he has no arguable basis in law or in fact. Therefore, plaintiff's vicarious liability claim against defendant Williams is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. Plaintiff's Eighth Amendment Claim

Plaintiff alleges that defendants PHS, CMS and the "prison eye doctor" have violated his constitutional right to be free from cruel and unusual punishment by denying him appropriate medical treatment. Specifically, plaintiff alleges that he was not immediately seen when he fell and injured his eye. (D.I. 2 at 3) He further alleges that he had to wait five months before he was even seen by the doctor. (Id.) The court finds that this claim is not frivolous within the meaning of 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1) and an appropriate order shall be entered.

NOW THEREFORE, at Wilmington this 28th day of February, 2003, IT IS HEREBY ORDERED that:

1. Plaintiff's "Motion for Discovery" (D.I. 7) is denied as premature.

2. To the extent that plaintiff is attempting to hold defendant Williams vicariously liable, his claim is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

IT IS FURTHER ORDERED that:

1. The clerk of the court shall cause a copy of this memorandum order to be mailed to plaintiff.

2. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), plaintiff shall complete and return to the clerk of the court an **original** "U.S. Marshal-285" form for defendants PHS, CMS, and the prison eye doctor, as well as for the Attorney General of the State of Delaware, pursuant to DEL. CODE ANN. tit. 10 § 3103(c). Failure to submit this form may provide grounds for dismissal of the lawsuit pursuant to Fed. R. Civ. P. 4(m).

3. Upon receipt of the form(s) required by paragraph 2 above, the United States Marshal shall forthwith serve a copy of the complaint (D.I. 2), this memorandum order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon each of the defendants so identified in each 285 form.

4. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said

defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

5. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant, who before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date on which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form is sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

6. The medical defendants shall provide a copy of plaintiff's medical record to both plaintiff and the court at the time of their initial response.

7. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel. The clerk of the court is instructed not to accept any such document unless accompanied by proof of service.

Sue L. Robinson
UNITED STATES DISTRICT JUDGE